IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 19TH JANUARY 2007 / 29TH PAUSHA 1928

FAO.No. 273 of 2005()

AGAINST THE ORDER DATED 14/3/2005 IN IA 1656/2004 IN AS.303/2002 of D.C & SESSIONS COURT,TRIVANDRUM O.S.NO.188 OF 1995 OF 1 ADDITIONAL SUB COURT, THIRUVANANTHAPURAM.

APPELLANT: APPELLANT:PETITIONER

P.GEETHA, D/O.PONNAMMA,
AMBALATHINKARA PUTHEN VEEDU, KAZHAKUTTOM,
MEMAMKULAM VILLAGE, THIRUVANANTHAPURAM.

BY ADVS. M/S.M.R.ANANDAKUTTAN, B.SATHIQ,
R.S.MADHU AND MAHESH ANANDAKUTTAN

RESPONDENTS: RESPONDENTS: CR.PETITIONERS:

1. STATE OF KERALA, REPRESENTED BY
DISTRICT COLLECTOR, THIRUVANANTHAPURAM.

2. DEPUTY COLLECTOR (LA), COLLECTORATE,
THIRUVANANTHAPURAM.

3. THE SPECIAL TAHSILDAR, ADDL.L.A.UNIT,
CONVENT ROAD, THIRUVANANTHAPURAM.

4. KAZHAKUTTOM GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY, KAZHAKUTTOM
PANCHAYAT, KAZHAKUTTOM.

5. TECHNOPARK, REPRESENTED BY ITS SPECIAL OFFICER,
VAZHUTHACAUD, THIRUVANANTHAPURAM.

R1 TO R3 BY GOVERNMENT PLEADER SRI.L.G.SURESH BABU
R4 BY ADV. SRI.M.RAJAGOPALAN NAIR

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 19/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.T. SANKARAN, J.

F.A.O.NO. 273 OF 2005

Dated this the 19th day of January,2007

JUDGMENT

The plaintiff in O.S.No.188 of 1995, on the file of the Court of the I Additional Subordinate Judge, Thiruvananthapuram, challenges the order dismissing the application filed by her for re-admission of the appeal, namely, A.S.No.303 of 2002, District Court, Thiruvananthapuram.

2. The suit was filed by the appellant for declaration of her title to the plaint schedule property. The suit was dismissed. An appeal was filed by the plaintiff, which was dismissed for default on 30.6.2004. I.A.No.1656 of 2004 was filed for re-admission of the appeal. The reason stated in the affidavit for non-appearance on the date on which the appeal was taken up for hearing is that the date of posting was omitted to be noted by the Advocate's clerk. The court below dismissed the application on the ground that neither the Advocate nor the Advocate's

clerk filed any affidavit in support of the application for re-admission of the appeal. That is the only ground stated by the court below for dismissing the application. The reason stated by the court below is clearly erroneous.

3. The application was filed within time before the court below. The dismissal of the application on the ground that it was not supported by the affidavit of the Advocate or the Advocate's clerk was not proper. In the facts and circumstances of the case, I am of the view that the application is liable to be allowed.

In the result, the appeal is allowed, the order in I.A.No.1656 of 2004 in A.S.No.303 of 2002 is set aside and I.A.No.1656 of 2004 is allowed.

(K.T.SANKARAN)
Judge

ahz/